

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN MARSHALL STEVENSON,

Defendant.

Case No. [18-cr-00187-JSW-1](#)

**ORDER DENYING MOTION TO
SUPPRESS AND SETTING STATUS
CONFERENCE**

Re: Dkt. No. 13

Now before the Court for consideration is the motion to suppress filed by Defendant Kevin Marshall Stevenson (“Mr. Stevenson”). The Court has considered the parties’ papers, relevant legal authority, the record in this case, and it has had the benefit of oral argument. Mr. Stevenson asked for an evidentiary hearing. At oral argument, the Court inquired about the basis for this request. As he did in his reply brief, Mr. Stevenson did not point to any facts that were in dispute. Rather, he relied on the manner in which the Government characterized the evidence. The Court concludes that Mr. Stevenson has not shown there are material facts in dispute that would require an evidentiary hearing to resolve. For the reasons that follow, the Court DENIES Mr. Stevenson’s motion.

BACKGROUND

On January 19, 2018, BART Police Officer Jonathan Guerra was driving a marked BART police vehicle near the intersection of 9th and Madison Streets in Oakland. (Declaration of Officer Guerra (“Guerra Decl.”), ¶ 3; Declaration of Hanni Fakouri (“Fakouri Decl.”), ¶ 2, Ex. A (Guerra Police Report).) Officer Guerra attests that an Asian male (hereinafter, the “RP”), driving a silver minivan pulled up next to his vehicle and tried to communicate with him. (Guerra Decl., ¶ 3.)

Officer Guerra lowered his window. According to Officer Guerra, the RP pointed to a man and told Officer Guerra the man had robbed a bank. (Guerra Decl., ¶ 3 & Ex. 1 (Guerra Body Camera Video (“Guerra Video”) at 00:09-00:14, 00:32 (RP states “that guy right there”)); Guerra Police Report.) The audio portion of Officer Guerra’s body camera does not capture his initial discussion with the RP. However, the RP also placed a 911 call to the Oakland Police Department. The RP’s discussion with Officer Guerra is captured on the 911 recording. When the RP first identifies the man to Officer Guerra, he sounds calm. However, as the RP repeatedly states “that guy right there” and repeats that the man robbed a bank, his voice becomes agitated. (Declaration of FBI Special Agent Beth Alvarez, ¶ 4, Ex. 2 (911 Call at 3:30-3:50).)¹

Officer Guerra advised BART police dispatch by radio that the RP reported a “211 bank suspect” and that the suspect was walking eastbound on 9th towards Oak. Officer Guerra also reported that he had a visual on the suspect. (Guerra Decl., ¶ 3; Guerra Video at 00:33-00:46; *see also* Fakouri Decl., ¶ 4, Ex. C (CAD Recording).) The dispatch operator inquired whether there was any mention of weapons, and Officer Guerra asked the RP: “Did he have a weapon?” (CAD Recording; Guerra Video at 01:05-01:10.) The RP stated “he robbed a bank he has a gun,” and Officer Guerra reported that fact to dispatch. (911 Call at 4:30-4:35; Guerra Video at 01:11-01:18.) The RP’s voice sounds agitated when he is reporting this information to Officer Guerra.

Officer Guerra gave dispatch following description of the man: “HM, black baseball cap on backwards, blue pullover and brown pants, black shoes.” (Guerra Video at 00:46-00:59; *see also* CAD Recording.) Officer Guerra also reported to the dispatch officer “[t]hat’s him, walking southbound,” and the dispatch officer repeated that information. (*Id.* at 01:29-01:33.) Uniformed BART police officers, Carlos Dazhan, Bryan Trabanino, and Jason Billings (collectively the “BART Officers”), heard Officer Guerra’s report, including the report that the suspect had a gun. They exited the Lake Merritt BART station at 9th and Oak Streets. (Declaration of Officer Carlos

¹ With the exception of the 911 call, the Court has not relied on the Declaration of FBI Special Agent Beth Alvarez or the exhibits attached to that declaration. The Court has listened to the 911 call, and it relies only on the portion of that call that overlaps with the time for which Officer Guerra’s body camera did not capture the audio of his encounter with the RP. That portion of the 911 recording starts at approximately 3:35 and runs to approximately 4:45.

1 Dazhan (“Dazhan Decl.”), ¶¶ 3-4; Declaration of Officer Bryan Trabanino (“Trabanino Decl.”),
 2 ¶¶ 3-4; Declaration of Officer Jason Billings (“Billings Decl.”), ¶¶ 3-4; Guerra Police Report; *see*
 3 *also* Fakouri Decl., ¶ 8, Ex. G (D. Davis Police Report).)

4 Officers Billings and Trabanino attest that they saw a person who fit Officer Guerra’s
 5 description of the suspect. It is undisputed the person they saw was Mr. Stevenson. The BART
 6 Officers all attest that Mr. Stevenson walked into the Lake Merritt BART station at 8th and Oak
 7 Streets. They ran after Mr. Stevenson, drew their weapons, and ordered Mr. Stevenson to stop, get
 8 down on the ground, and show his hands. Mr. Stevenson complied with those orders. (Billings
 9 Decl., ¶¶ 4-5, 7 & Ex. 1 (Billings Body Camera Video (“Billings Video”) at 00:01-01:18);
 10 Trabanino Decl., ¶¶ 4-5, 8 & Ex. 1 (Trabanino Body Camera Video (“Trabanino Video”) at 00:01-
 11 01:16); *see also* Dazhan Decl., ¶¶ 4-5, 6 & Ex. 1 (Dazhan Body Camera Video (“Dazhan Video”) at
 12 00:01-00:43).)

13 The BART Officers subsequently holstered their weapons, and Officers Dazhan and
 14 Billings placed Mr. Stevenson in handcuffs. (Dazhan Decl., ¶ 5; Dazhan Video at 00:43-00:53;
 15 Billings Decl., ¶¶ 5-6; Billings Video at 01:18-01:31; Trabanino Decl., ¶ 6; Trabanino Video at
 16 01:16-01:31.) The video recordings show that Mr. Stevenson was wearing a blue zip-up jacket, a
 17 black baseball cap, pants that have rusty brown and black blotches on them, and black shoes.
 18 (*See, e.g.*, Billings Video at 06:23-06:33; Dazhan Video at 00:36-00:43, 02:23-02:25.)

19 Officer Dazhan asked Mr. Stevenson if he had a gun and advised Mr. Stevenson that he
 20 was asking the question for the Officers’ safety. Mr. Stevenson replied he did. At the time Mr.
 21 Stevenson was lying on his stomach. When asked where it was, Mr. Stevenson stated it was in
 22 front of him. Officers turned Mr. Stevenson over, unzipped his jacket, and removed a bag. When
 23 asked if the gun was in the bag, Mr. Stevenson responded it was. Officers moved the bag away
 24 from Mr. Stevenson. (Dazhan Decl., ¶ 5; Dazhan Video at 00:53-01:57; Billings Decl., ¶¶ 5-6;
 25 Billings Video at 01:31-02:40; *see also* Trabanino Video at 01:47-02:33; Fakouri Decl., ¶¶ 5-6,
 26 Exs. D & E (Dazhan and Billings Police Reports).) The videos show that the officers on scene did
 27 not search the bag recovered from Mr. Stevenson. However, once Oakland police officers arrived
 28

on scene, they opened the bag and discovered a firearm and money.² (See Trabanino Video at 02:33-3:41, 04:12-04:18; Dazhan Video at 01:58-03:06; Billings Video at 02:41-03:53, 10:25-10:28s.)

The Court will address additional facts as necessary in the analysis.

ANALYSIS

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated” U.S. Const. amend. IV. It is undisputed that the BART Officers did not have a warrant to search or to arrest Mr. Stevenson. “Because warrantless searches and seizures are *per se* unreasonable, the government bears the burden of showing that a warrantless search or seizure falls within an exception to the Fourth Amendment’s warrant requirement.” *United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012).

Mr. Stevenson argues the BART Officers engaged in a *de facto* arrest that was not supported by probable cause and argues, in the alternative, that they lacked reasonable suspicion to conduct a *Terry* stop.³ The Government, in turn, argues the BART Officers engaged in a *Terry* stop supported by reasonable suspicion. In the alternative, it argues they had probable cause to arrest Mr. Stevenson before he admitted to having a weapon on him and before Oakland police officers discovered the money and the firearm.⁴ It is undisputed that the only information available to Officer Guerra was the information provided by the RP, which was relayed to the BART Officers.

The Court begins its analysis with an assessment of whether the BART officers engaged in a *de facto* arrest, and it will evaluate the reliability and the sufficiency of the information provided

² Mr. Stevenson’s only challenge to the search of the bag is that it was the fruit of an unlawful seizure.

³ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁴ The Government also relies on the exigent circumstances exception, but its argument consists of two sentences. Because the Court concludes the BART Officers did not engage in a *de facto* arrest and had reasonable suspicion to stop and search Mr. Stevenson for weapons, the Court does not reach this argument.

by the RP in that context. There is “no bright-line rule to determine when an investigatory stop becomes an arrest.” *Washington v. Lambert*, 98 F.3d 1181, 1185 (9th Cir. 1996). The inquiry is fact-specific, and the Court must consider the totality of the circumstances. *Id.* As part of that evaluation, the Court considers “the intrusiveness of the stop, i.e., the aggressiveness of the police methods and how much the [defendant’s] liberty was restricted.” *Id.*; accord *United States v. Edwards*, 761 F.3d 977, 981 (9th Cir. 2014). The Court also must consider “the justification for the use of such tactics, i.e., whether the officer had sufficient basis to fear for his safety to warrant the intrusiveness of the action taken.” *Washington*, 98 F.3d at 1185.

When it conducts the first inquiry, the Court evaluates the situation from Mr. Stevenson’s perspective. *Edwards*, 761 F.3d at 981. If the level of intrusiveness would “cause a reasonable person to feel that he or she will not be free to leave after brief questioning,” an investigatory stop may be converted to an arrest. *United States v. Guzman-Padilla*, 573 F.3d 865, 884 (9th Cir. 2009). Here Mr. Stevenson was outnumbered by the three BART Officers, who pointed their weapons in his direction and ordered him to get down. However, they approached him near a BART station and the record shows there were other individuals in the vicinity.

Mr. Stevenson also was handcuffed. Each of these facts demonstrate the BART Officers used intrusive and aggressive tactics to seize Mr. Stevenson. *See Edwards*, 761 F.3d at 982; *see also United States v. Bautista*, 684 F.2d 1286, 1289 (9th Cir. 1982) (“[H]andcuffing substantially aggravates the intrusiveness of an otherwise routine investigatory detention and is not part of a typical *Terry* stop.”). Although the videos show that very little time elapsed between the time the BART Officers saw Mr. Stevenson and the time he was seized, the Court concludes a reasonable person in Mr. Stevenson’s position would have felt that his liberty was restricted.⁵

The second inquiry is whether the BART Officers’ actions were reasonable and justified under the totality of the circumstances, and the Court evaluates the situation from their perspective. *Edwards*, 761 F.3d at 981. The Ninth Circuit has made it

⁵ Officer Guerra twice states that Stevenson was “in custody.” (Guerra Video at 2:50, 3:01-02.)

clear that [it has] only allowed the use of especially intrusive means of effecting a stop in special circumstances, such as 1) where the suspect is uncooperative or takes action at the scene that raises a reasonable possibility of danger or flight; 2) where the police have information that the suspect is currently armed; 3) where the stop closely follows a violent crime; and 4) where the police have information that a crime that may involve violence is about to occur. ... [S]ome combination of these factors may also justify the use of aggressive police action without causing an investigatory stop to turn into an arrest.

Washington, 98 F.3d at 1189; *see also United States v. Miles*, 247 F.3d 1009, 1013 (9th Cir. 2001) (intrusive means to effectuate a stop may be used where “where the police have information that the suspect is currently armed or the stop closely follows a violent crime”). When a suspect is cooperative and an officer does not have “information that they are armed or specific information linking them to a recent or inchoate dangerous crime, the use of [] aggressive and highly intrusive tactics is not warranted, at least when ... there are no other extraordinary circumstances involved.” *Washington*, 98 F.3d at 1192.

In *Washington*, a police officer saw two black men whom he believed fit the description of men suspected of a series of robberies, and he followed them to their hotel. At that point, three to four police cars and between four to seven officers, with weapons drawn, stopped the men, handcuffed them, and subsequently placed them in police cars. *Id.* at 1184. The men were compliant at all times, and the record showed they did not, in fact, match the descriptions of the men suspected of the robberies. *Id.* The men filed suit under 42 U.S.C. section 1983. The district court denied a motion for summary judgment and concluded the stop amounted to a *de facto* arrest that was not supported by probable cause. *Id.* The Ninth Circuit affirmed, reasoning the men “did nothing immediately prior to or during their confrontation with the police to justify” the use of the aggressive tactics, the officers had “no specific information that either” man was armed, no violent crime occurred shortly before the stop, and there were no “specific similarities between the [men] and the suspects sought[.]” *Id.* at 1190 (emphasis in original).

In *Edwards*, the police received a 911 call from an unidentified male who stated that a “young black male ... was shooting at passing cars, including the caller’s.” 761 F.3d at 980. The

1 caller also provided a specific location for the suspect, details about his physical appearance and
2 age, and some information about the gun. Four officers responded to the location shortly
3 thereafter and saw two men, only one of whom, the defendant, matched the description of the
4 shooter. *Id.* All the officers drew their weapons as they approached the men, and they directed
5 both men to kneel. One of the officers handcuffed the defendant, performed a frisk, and located a
6 silver revolver. Although the officers attempted to contact the anonymous caller, he had left the
7 scene and “did not want to be involved with the case.” *Id.*

8 The defendant moved to suppress the gun and argued that he had been arrested without
9 probable cause. The Ninth Circuit rejected his argument. *Id.* at 981-82. The court stated “there is
10 no doubt that the police were intrusive in stopping” the defendant. *Id.* at 981. However, the
11 defendant was the only person in the vicinity who matched the shooter’s description “and
12 therefore could be armed and dangerous, possibly having just committed a violent crime.” *Id.*
13 The court determined “the officers’ aggressive conduct was reasonable” and “legitimate safety
14 concerns justified their on-the-spot decision to use intrusive methods to stabilize the situation
15 further.” *Id.* at 982. Similarly, in *Miles*, the court the police approached the defendant with their
16 weapons drawn, directed him to get down on his knees, and handcuffed him. *Miles*, 247 F.3d at
17 1013. When the officers arrived on scene, the defendant was the only man who matched the
18 description of someone who had recently fired shots at a home. In addition, the man was near two
19 other individuals, so the officers were outnumbered. *Id.* The court held this “intrusive and
20 aggressive” conduct was justified by the officers “legitimate safety concerns.” *Id.*

21 In *United States v. Fontenot*, the court denied a motion to suppress where the officer
22 responded to a report that a man in front of a liquor store had pulled out a gun. No. 10-cr-00778-
23 RS, 2011 WL 634814, at *1, *3 (N.D. Cal. Feb. 11, 2011). Although other officers were in the
24 vicinity, the officer was by himself when he approached the suspect, who was with two other men.
25 *Id.*, 2011 WL 634814, at *2-3. The court found that it was reasonable for the officer to approach
26 “with his weapon drawn and held in a low ready position” and to order the men to raise their
27 hands. When the defendant did not “comply fully,” another officer briefly raised his rifle. The
28 court determined that under the totality of the circumstances, the stop did not amount to a *de facto*

1 arrest. *Id.*, 2011 WL 634814, at *3.

2 Although it is not published, in *United States v. Morris*, the court concluded a stop did “not
3 exceed the bounds of a *Terry* stop,” where the officers approached the defendant with guns drawn,
4 ordered him to the ground, and handcuffed him. 417 Fed. Appx. 713, 714 (9th Cir. 2011). While
5 the defendant was cooperative, the court noted that the officers “reasonably believed that [he] was
6 armed,” based on a 911 call, in which the caller stated that a man matching defendant’s description
7 “had just displayed a gun in a blue box he was carrying.” *Id.* The defendant was carrying a cooler
8 when he was stopped, and the court determined that “safety was an obvious concern given that he
9 was thought to be carrying a gun.” *Id.* at 715.

10 The BART Officers all attest Mr. Stevenson *walked* into the BART station, and the video
11 footage shows that Mr. Stevenson complied with their demands. There is no evidence to suggest
12 that any of the BART Officers had a reason to believe a violent crime was about to occur,
13 although they had been advised he was a suspect in a bank robbery. The Court concludes the
14 reasonableness of their actions hinges on the reliability and sufficiency of the information
15 provided by the RP that Mr. Stevenson was armed and had committed a robbery.

16 Whether a tip, standing alone, will be sufficient to establish probable cause or reasonable
17 suspicion depends upon “an informant’s ‘veracity,’ ‘reliability,’ and ‘basis of knowledge.’”
18 *Alabama v. White*, 496 U.S. 325, 328-29 (1990) (quoting *Illinois v. Gates*, 462 U.S. 213, 230
19 (1983)); *see also Florida v. J.L.*, 529 U.S. 266, 269 (2000) (“[A]n anonymous tip alone seldom
20 demonstrates the informant’s basis of knowledge or veracity,” but in some cases “an anonymous
21 tip, suitably corroborated, exhibits sufficient indicia of reliability to provide reasonable suspicion
22 to make [an] investigatory stop.”) (internal quotations omitted); *United States v. Palos-Marquez*,
23 591 F.3d 1272, 1275 (9th Cir. 2010) (“An officer may justify an investigatory stop based solely or
24 substantially on an informant’s tip, depending on its reliability. At its most reliable, an
25 informant’s tip alone may sufficiently establish reasonable suspicion for a stop.”). The Court must
26 consider those factors in the context of the relevant standard of proof. *White*, 496 U.S. at 328-29.

On one end of the “reliability spectrum⁶” lie purely anonymous tips relaying general allegations of criminal behavior, such as in the *J.L.* case. In that case, the Supreme Court found an anonymous tip was not sufficiently reliable to support a *Terry* stop. 529 U.S. at 268. There, the police received an anonymous tip that “a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun.” *Id.* The call was not recorded, and the police had no information about the person who made the report. The informant also did not provide any information about how he knew the man had a gun. *Id.* at 271. The police arrived at the bus stop shortly after the call and observed the defendant, in a plaid shirt. The police did not see a firearm, and the defendant and his companions did not make “threatening or otherwise unusual movements.” *Id.* at 269. The Court noted that the information provided by the informant about what the defendant was wearing and where he would be located was reliable information about the defendant’s identity. It did not, however, provide reliable information about the alleged criminal activity. *Id.* at 271-72. The Supreme Court emphasized that a tip must “be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.” 529 U.S. at 272.

At the other end of the spectrum is a case like *United States v. Terry-Crespo*, 356 F.3d 1170 (9th Cir. 2004). In that case, the police received a 911 call from a man who stated that a man had just threatened him with a handgun and provided the police with information about the man’s ethnicity and what he was wearing. The caller also identified himself by name to the 911 operator. Because he had borrowed the phone, the caller was not able to provide the operator with a telephone number. He also gave the operator other information that suggested he did not want to be contacted by the police. *Id.* at 1172.

The Ninth Circuit distinguished *J.L.* and found the 911 call alone gave the police reasonable suspicion to stop the defendant, who matched the description on the 911 call. *Id.* at 1174. The court noted the 911 call was recorded and the caller had provided his name. Therefore, even if he could not be located, the caller “jeopardized any anonymity” he may have had, which added to the reliability of the tip. *Id.* at 1175-76. The *Terry-Crespo* court also noted that the fact

⁶ *Palos-Marquez*, 591 F.3d at 1275.

1 that “an emergency 911 call is entitled to greater reliability than an anonymous tip concerning
2 general criminality.” *Id.*

3 Similarly, in the *Palos-Marquez* case, the court determined that a tip “displayed significant
4 indicia of reliability” that, in combination with other facts, gave rise to reasonable suspicion. In
5 that case, a border patrol agent observed a pickup truck, driving at a higher than normal rate of
6 speed, attempt to pass a UPS truck. The officer had to veer to avoid a collision with the pickup.
7 591 F.3d at 1273-74. Shortly thereafter, the UPS driver pulled up next to the agent and stated he
8 had observed the driver of the truck stop and pick up suspected illegal aliens. *Id.* at 1274. In
9 evaluating the reliability of the information provided by the UPS driver, the Ninth Circuit stated
10 that in-person tips have a “substantial indicia of reliability[.]. First, ... an in-person informant risks
11 losing anonymity and being held accountable for a false tip. ... Second, when a tip is made in-
12 person, an officer can observe the informant’s demeanor and determine whether the informant
13 seems credible enough to justify immediate police action without further questioning.” *Id.* at 1275
14 (citing cases). In *Navarette v. Illinois*, the Supreme Court cited other factors that a court may
15 consider when determining whether a tip about criminal activity is sufficiently reliable: whether
16 the person providing the tip is an eyewitness to the criminal activity; whether the report is
17 contemporaneous to the alleged criminal activity; the level of information the tipster is able to
18 provide about a suspect; and, whether the tipster provides predictive information about future
19 behavior. 572 U.S. 393, 397-401 (2014).

20 As in the *Palos-Marquez* case, the RP spoke with Officer Guerra in person, which
21 provided Officer Guerra the opportunity to observe the RP’s demeanor and jeopardized the RP’s
22 anonymity. The Court has listened to the 911 call and has viewed the video from Officer Guerra’s
23 body camera, in which one can hear the RP speaking. As set forth above, while the RP is talking
24 to Officer Guerra, his voice sounds agitated and his repeated statements “that’s the guy”, impart a
25 measure of urgency. These Court concludes these facts lend indicia of reliability to the tip. *See,*
26 *e.g., Navarette*, 572 U.S. at 400 (“the stress of excitement caused by a startling event” can lend
27 credibility to a tip).

28 The RP also advised Office Guerra that he called the police. Although the RP did not state

1 he called 911, given the nature of the crime described, the Court concludes it would have been
 2 reasonable for Officer Guerra to infer the RP called 911. In *Terry-Crespo*, the court noted that a
 3 911 call is “entitled to greater reliability than a tip concerning general criminality because the
 4 police must take 911 emergency calls seriously and respond with dispatch.” 356 F.3d at 1176. In
 5 addition, based on the record, Mr. Stevenson was the only person in the vicinity who matched the
 6 description provided by Officer Guerra, who stated that he had a visual on the suspect.⁷

7 Unlike the facts in the *Edwards* and *Miles* cases, this is not a case where the BART
 8 Officers responded to an area where shots had been fired. The RP also did not provide Officer
 9 Guerra any information about how he knew the man he identified had robbed a bank or how he
 10 knew the man had a gun. A tip “is considered more reliable if the informant reveals the basis of
 11 knowledge of the tip[.]” *United States v. Rowland*, 464 F.3d 899, 907 (9th Cir. 2006). However,
 12 the Court takes into consideration the nature of the crime at issue. *Cf. Thomas v. Dillard*, 818 F.3d
 13 864, 878 (9th Cir. 2016) (“[T]he type of crime a person is suspected of committing may be highly
 14 relevant to the existence of reasonable suspicion for a weapons frisk.”). The Court also takes into
 15 consideration the fact that the BART Officers approached Mr. Stevenson at the entrance to a
 16 BART station and the fact that members of the public were in the vicinity. *Cf. Miles*, 247 F.3d at
 17 1013 (proximity of other individuals raised concerns for those individuals’ safety).

18 The Court concludes the information provided by RP, relayed to the BART Officers
 19 through Officer Guerra, was sufficiently reliable to provide them with a reasonable basis to
 20 believe Mr. Stevenson was carrying a gun. That fact places this case in one of the special
 21 circumstances the Ninth Circuit has held can warrant the use of more aggressive and intrusive
 22 tactics to effect a seizure. *Washington*, 98 F.3d at 1189; *see also United States v. Greene*, 783

23
 24 ⁷ Mr. Stevenson argues that he did not actually match the description that Officer Guerra
 25 provided to his fellow officers. Although Mr. Stevenson is not visible from Officer Guerra’s body
 26 camera, the recordings suggest that the RP clearly points out the person he said robbed a bank to
 27 Officer Guerra, and Officer Guerra continues to state he has a visual on the suspect. The video
 28 recordings also show that as the BART Officers approached Mr. Stevenson they confirmed he was
 the person identified by Officer Guerra. The Court concludes that the mistakes Officer Guerra
 made about Mr. Stevenson’s ethnicity and the color of his pants do not render Officer Guerra’s
 description so tenuous that it undermines the reasonableness of BART Officers’ actions.

1 F.2d 1364, 1367-68 (9th Cir. 1986) (use of aggressive tactics reasonable and justified where an
2 informant reported to police she had seen a pistol in the defendants' motel room). When the Court
3 considers the totality of the circumstances, the Court concludes the BART Officers' actions were
4 reasonable under these circumstances and did not amount to a *de facto* arrest.

5 Mr. Stevenson also argues the officers lacked reasonable suspicion to stop and
6 subsequently frisk him. Law enforcement officers may, consistent with the Fourth Amendment,
7 engage in brief investigatory stops if the officers have reasonable suspicion that an individual is
8 engaged in criminal activity. *Terry*, 392 U.S. at 30. In order to justify a *Terry* frisk, an officer
9 must have a "particularized and objective basis for suspecting the particular person stopped of
10 criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18 (1982); *see also United States v.*
11 *Arvizu*, 534 U.S. 266, 273 (2002) ("Reasonable suspicion" exists where officers, based on the
12 totality of the circumstances, have a "particularized and objective basis for suspecting legal
13 wrongdoing."). Although a "mere hunch" will not suffice, "the level of suspicion the standard
14 requires is 'considerably less than proof of wrongdoing by a preponderance of the evidence,' and
15 'obviously less' than is necessary for probable cause." *Navarette*, 572 U.S. at 397s (quoting
16 *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).

17 For the reasons set forth above, the Court finds the information provided by the RP was
18 sufficiently reliable to provide the BART Officers with reasonable suspicion to believe Mr.
19 Stevenson was engaged in criminal activity and that he was armed. *Id.* Accordingly, the Court
20 concludes the initial *Terry* stop and Mr. Stevenson's subsequent arrest did not violate his Fourth
21 Amendment rights.

22 CONCLUSION

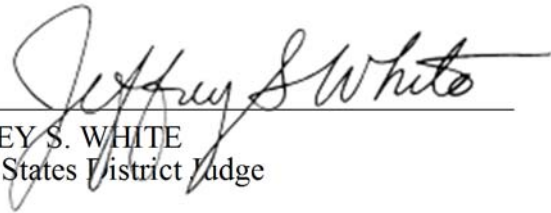
23 For the foregoing reasons, the Court DENIES Mr. Stevenson's motion. The Court
24 ORDERS the parties to appear on December 18, 2018 at 1:00 p.m. for a status conference. If the
25 parties are not available on December 18, 2018, they may submit a stipulation and proposed order
26 requesting a continuance to an open and available date in January 2019.

27 If the parties believe the time between the date of this Order and their next appearance
28 before the Court may be excluded from the Speedy Trial Act calculation, they may submit a

1 stipulation and proposed order for the Court’s consideration.

2 **IT IS SO ORDERED.**

3 Dated: December 10, 2018

4 
5 JEFFREY S. WHITE
6 United States District Judge

United States District Court
Northern District of California

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